

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.5061 of 2017

P.Sagaya Mary

.. Petitioner

Vs.

1.The Central Administrative
Tribunal, Chennai Bench
rep. by its Registrar,
City Civil Court Building,
High Court Complex, Chennai.

2.The Union of India
rep. by its Secretary to
Government,
Ministry of Defence,
New Delhi.

3.The Chief Engineer (Head Quarters),
Southern Command,
Pune - 411 001.

4.The Commander Works Engineer,
Wellington, Barracks Post,
Nilgiris.

5.The Garrison Engineer (DSSC),
Military Engineer Services,
Wellington, Nilgiris - 643 231.

6.The Controller General of
Defence Accounts,
Office of the Controller General
of Defence Accounts (Pension),
Ulangatar Road, Palam,
Delhi Cantonment,.

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7.The Principal Controller of
Defence Accounts (Pension),
Allahabad.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the records of the first respondent Tribunal in O.A.310/00853/2015 dated 07.06.2016 and the order passed by the fifth respondent in No.1323/GPN/67/E1R dated 10.12.2013 and quash the same and consequently direct the respondents 2 to 7 to sanction family pension to the petitioner from the date of death of her husband with arrears and all consequential benefits.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.A.Kumaraguru for R2 to R7
R1 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition has been filed by the petitioner, who is wife of the deceased G.Punniyanathan. It appears that he married another lady earlier. Even according to the deceased husband of the petitioner, the first wife by name Pushparani eloped with somebody way back in the year 1977. The marriage between the petitioner and her deceased husband said to have taken place in March, 1990. At that point of time, he was working as Welder in the office of the fourth respondent. Thereafter, two daughters were born in the year 1991 and 1994 respectively. A suit was filed by her in O.S.No.40 of 1995 before the District Munsif Court, Coonoor, seeking to declare her status as wife, which was decreed, though, exparte.

2.At the time of superannuation, the deceased husband of the petitioner sought for only lifetime pension. Accordingly, it was given to him. The request made by him was taken into consideration after the suit was decreed against him. On 23.11.2011, the husband of the petitioner died. Thereafter, the petitioner made an application for family pension enclosing copies of ration card, legal heirship certificate and the judgment of the civil Court. By the order dated 10.12.2013, the request was rejected on the premise that the deceased husband nominated the first wife at the earlier point of time and by the letter dated 10.07.1995, he has stated that she left him way back in the year 1977 and therefore he should only be given life

time pension. Challenging the same, the petitioner filed an Original Application before the Tribunal. The Tribunal rejected the Original Application inter alia holding that inasmuch as the first marriage was not legally terminated, the petitioner is not entitled for any pension. However, it was observed that for the unmarried daughters, if the Rules provide a separate application can be made. Aggrieved over the same, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner would submit that the decree would govern the parties especially the petitioner and her husband. The respondent ought to have taken into consideration the documents filed viz., ration card, legal heriship certificate and the judgment of the civil Court. It is not the case where the first wife has made any claim. Similarly, the fact that two children were born out of the wedlock is not in dispute. Therefore, both the fifth respondent and the Tribunal took a hyper technical view while rejecting the claim made.

4. Learned counsel appearing for respondents 2 to 7 submitted that even the husband of the petitioner made a request for only lifetime pension. There is no effort made to change the name of the erstwhile wife by replacing it with that of the petitioner. Thus, no interference is required.

5. We are dealing with the case of a widow, who has been living with the deceased from 1990 onwards. Though, in the civil suit, the respondents are not parties and notwithstanding the fact that it is an exparte decree, the status of the petitioner has been established. Certainly, it will be binding on the husband of the petitioner. There would not have been any occasion for the petitioner to assign the name in the place of the name of the first wife. This is for the reason that she continued to live with her husband and it cannot be expected that she can approach respondents 2 to 7 at that point of time. We are also dealing with the case where the so called first wife has not made any claim. From the records, it is seen that she is not living with her husband. Though he died in the year 2011, till 2019, there was no claim made by her. The fact that two children were born out of the wedlock is not in dispute. Even under the Indian Evidence Act, if a person has not been heard of beyond the statutory period, there is a presumption that will come into play. This is a matter which has been taken note of or presumed to be taken note of by the civil Court while decreeing the suit. The fact that the husband of the petitioner made a representation stating that he should be given lifetime pension will not take away her right. She was not a party to that and in any case, when once the status of the wife is declared, the consequence will have to follow. We are of the view that both

the fifth respondent and the Tribunal took a very technical view of the matter. The Tribunal, while holding that the daughters can approach the concerned respondent, has erroneously rejected the case of the petitioner.

6. In such view of the matter, we are of the view that the order of the Tribunal requires interference. Accordingly, the order of the Tribunal dated 07.06.2016 stands set aside and consequently, the Original Application stands allowed. However, we make it clear that the payment of family pension will have to be made only prospectively starting from the month of March, 2019 onwards. This we do so for the reason that the petitioner approached the Tribunal belatedly. Accordingly, the writ petition is allowed. No costs.

mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
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City Civil Court Building,
High Court Complex, Chennai.
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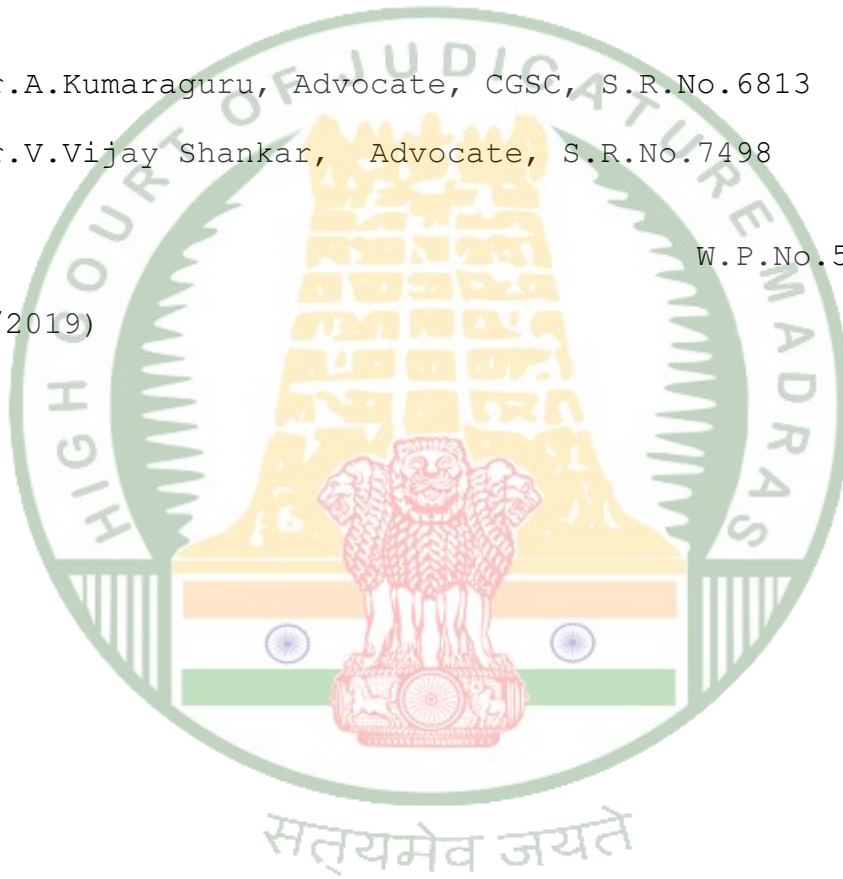
7.The Principal Controller of
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Allahabad.

+1cc to Mr.A.Kumaraguru, Advocate, CGSC, S.R.No.6813

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.7498

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kak(05/03/2019)



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